

**OPINION
49-116**

March 22, 1949 (OPINION)

LIQUOR

RE: Airlines

I have your letter addressed to the Liquor Control Division, in which you ask the question: "If you feel the serving of liquor to passengers while aloft is within the jurisdiction of your state, we would like to know the requirements under your laws and regulations to which we must submit when liquor is sold by the drink to passengers and when it is dispensed gratuitously."

As to jurisdiction Sec. 2-0302 of the N. D. Revised Code of 1943 states: "Sovereignty in the space above the lands and waters of this state is declared to rest in the state, except where granted to and assumed by the United States pursuant to a constitutional grant from the people of this state." This clearly shows that you would come under the jurisdiction of this state when flying over it or while on the ground when you are in its territorial limits.

As to the rules and regulations you must follow, chapter 5-03 of N.D. Supplement of 1947 of N. D. Revised Code of 1943 provides that any person before he may engage in the retail sale of liquor must first obtain a license from the local authorities of the city or village wherein his place of business will be conducted. It is quite obvious that you could not comply with this provision.

There is one other provision by which common carriers may obtain a license to sell liquor. This is in Chapter 5-04: "Any railroad company, dining car company, or sleeping car company operating in this state may *****." However, this section does not include anything except the railroad, dining car, and sleeping car companies. Aside from the aforementioned provision there are no other methods by which one may obtain a license to sell liquor at retail.

It is my opinion that an airline can not be included in the provisions set forth for railroads, dining car, and sleeping car companies. Therefore, it is my conclusion that we can not authorize you to engage in the retail sale of liquor. I believe the legislature inadvertently failed to make any provisions for airlines and common carriers. Even though there is no specific law prohibiting the granting of license to airlines, they do not meet the requirements set forth by law to be granted a license for the retail sale of liquor.

WALLACE E. WARNER

Attorney General